

REMARKS**I. General**

Claims 63-125 are pending, and claim 125 is new. The issues in the Office Action mailed April 5, 2005 are as follows:

- Claims 63, 78-89, 101-109, 111-120, and 122-124 are rejected under 35 U.S.C. §103(a) as being unpatentable over US Patent 6,151,318 (hereinafter, *Woodward*) in view of US Patent 6,226,296 (hereinafter, *Lindsey*).
- Claims 68-71, 94, and 121 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of US Patent 5,583,859 (hereinafter, *Feldmeier*).
- Claims 73-77 and 96-99 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of UK Patent Application 2,086,184 (hereinafter, *Spendley*).
- Claim 100 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of US Patent 6,658,010 (hereinafter, *Enns*).
- Claims 64-67, 72, 90-93, 95, and 110 are objected to for depending upon rejected base claims, but are otherwise indicated as allowable.

Applicant hereby traverses the outstanding rejection and requests reconsideration and withdrawal in light of the remarks contained herein.

II. New Claim

Claim 125 is added by this amendment. Support for the new claim may be found, at least, in the original disclosure of this application at page 10, line 19 through page 12, line 3. Accordingly, no new matter is added. The new claim is allowable, at least, because it recites features that are novel and non-obvious in view of the cited art.

III. Rejections Under 35 U.S.C. § 103(a)

A. Rejections over Woodward in view of Lindsey

Claims 63, 78-89, 101-109, 111-120, and 122-124 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey*. Applicant traverses the rejection.

To establish a prima facie case of obviousness under 35 U.S.C. § 103(a), three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the applied reference. Second, there must be a reasonable expectation of success. Finally, the applied reference must teach or suggest all the claim limitations. See M.P.E.P. § 2143. Without conceding any other criteria, Applicant respectfully asserts that the rejection does not satisfy the third criterion, as discussed further below.

1. Claims 63 and 78-87

Claim 63 recites, in part, “passing said chunk through an optical switch fabric.” The cited combination does not teach at least this feature of claim 63. The Office Action admits that *Woodward* fails to teach or suggest such feature. Office Action at 2. The Office Action then points to figures 2 and 33 and the passage at column 6, lines 12-42 of *Lindsey* to teach the feature. Office Action at 3. However, the cited portions of *Lindsey* do not teach the feature. Figure 2 shows two electrical multiplexing units connected by a fiber optic tie line. This is illustrated by the electrical to optical converter 217 at the output of electrical mux 210 and by the optical to electrical converter 221 at the input of electrical mux 220 in figure 2 of *Lindsey*. Accordingly, *Lindsey* teaches that the multiplexing is performed electrically on electrical signals, and that there is no optical switch fabric in the system. It should also be noted that figure 33 of *Lindsey* teaches a non-blocking matrix, but does not teach that the matrix is an optical switch fabric. Because the cited portions of *Lindsey* teach no optical switch fabric, the cited combination fails to teach or suggest “passing said chunk through an optical switch fabric,” as recited by claim 63.

Dependent claims 78-87 each depend either directly or indirectly from independent claim 63 and, thus, inherit all of the limitations of independent claim 63. Thus, the cited

combination does not teach or suggest all claim limitations of claims 78-87. It is respectfully submitted that dependent claims 78-87 are allowable at least because of their dependence from claim 63 for the reasons discussed above.

Further, in rejecting claims 83-87, the Office Action admits that Woodward does not teach the features recited in those claims. See Office Action at 3. The Office Action then asserts that such features are design choices, and are, therefore, obvious. The Office Action lists the features and states:

At the time of the invention, it would be obvious to a person of ordinary skill in the art to combine such subject matters teaching in the instant claims with *Woodward* as design choices. The motivation for doing so would have been to route data information through a communication network properly. Therefore, it would have been obvious to combine such subject matters and *Woodward* the invention as specified in these claims.

Id. at 4 (emphasis in original). It is believed that such statement is Official Notice by the Office that the above-recited features are known. Applicant knows of no reference that teaches such features. Therefore, it is believed that the features are not capable of instant and unquestionable demonstration as being well-known, as required of Official Notice by M.P.E.P. §2144.03(A).

Alternatively, such an assertion without documentary evidence may be appropriate if the Office Action provides “specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” M.P.E.P. §2144.03(B). However, because the above-quoted statement is merely an assertion, rather than reasoning, the Official Notice must fail. Accordingly, the cited combination does not teach or suggest the recited features of claims 83-87. While Applicant has traversed the contents of the Official Notice, Applicant further respectfully requests that the Examiner provide an affidavit or publication supporting such Notice under M.P.E.P. § 2144.03(C) if the Examiner believes such features are well-known. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 63 and 78-87.

In the rejection of claim 63 on page 3 of the Office Action, the Office Action mentions a reference called “Miles.” Because Miles is not mentioned elsewhere in the rejection of claim 63 and because specific subject matter of Miles is not cited, it is believed

that the inclusion of Miles is a typographical error. However, Applicant respectfully requests the chance to explore patentability with regard to Miles should such belief be incorrect.

2. Claims 88, 89, 101-109, and 111

Claim 88 recites, in part, “an IP packet router, including: an optical switch fabric through which said chunk passes.” The cited combination does not teach at least this feature of claim 88. The Office Action relies on the reasoning in the rejection of claim 63, and, therefore, does not rely on *Woodward* to teach or suggest such feature. Office Action at 4. The Office Action points to figures 2 and 33 and the passage at column 6, lines 12-42 of *Lindsey* to teach the feature. See Office Action at 3. However, the cited portions of *Lindsey* do not teach the feature. Figure 2 shows two electrical multiplexing units connected by a fiber optic tie line. This is illustrated by the electrical to optical converter 217 at the output of electrical mux 210 and by the optical to electrical converter 221 at the input of electrical mux 220 in figure 2 of *Lindsey*. Accordingly, *Lindsey* teaches that the multiplexing is performed electrically on electrical signals, and that there is no optical switch fabric in the system. It should also be noted that figure 33 of *Lindsey* teaches a non-blocking matrix, but does not teach that the matrix is an optical switch fabric. Because the cited portions of *Lindsey* teach no optical switch fabric, the cited combination fails to teach or suggest “an IP packet router, including: an optical switch fabric through which said chunk passes,” as recited by claim 88.

Dependent claims 89, 101-109, and 111 each depend either directly or indirectly from independent claim 88 and, thus, inherit all of the limitations of independent claim 88. Thus, the cited combination does not teach or suggest all claim limitations of claims 89, 101-109, and 111. It is respectfully submitted that dependent claims 89, 101-109, and 111 are allowable at least because of their dependence from claim 88 for the reasons discussed above.

Further, in rejecting claims 103, 104, 106, and 111, the Office Action admits that *Woodward* does not teach the features recited in those claims. See Office Action at 5. The Office Action then asserts that such features are design choices, and are, therefore, obvious. The Office Action lists the features and states, “In addition to above, such subject matters are of optical switch plane would be considered a design choice.” *Id.* It is believed that such statement is Official Notice by the Office that the above-recited features are known. Applicant knows of no reference that teaches such features. Therefore, it is believed that that

the features are not capable of instant and unquestionable demonstration as being well-known, as required of Official Notice by M.P.E.P. §2144.03(A).

Alternatively, such an assertion without documentary evidence may be appropriate if the Office Action provides “specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” M.P.E.P. §2144.03(B). However, because the above-quoted statement is merely an assertion, rather than reasoning, the Official Notice must fail. Accordingly, the cited combination does not teach or suggest the recited features of claims 103, 104, 106, and 111. While Applicant has traversed the contents of the Official Notice, Applicant further respectfully requests that the Examiner provide an affidavit or publication supporting such Notice under M.P.E.P. § 2144.03(C) if the Examiner believes such features are well-known. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 88, 89, 101-109, and 111.

3. Claims 112-120, and 122-124

Claim 112 recites, in part, “directing said chunks through said appropriate optical switch plane toward a plurality of destination ports.” The cited combination does not teach at least this feature of claim 112. The Office Action relies on the reasoning in the rejection of claim 63, and, therefore, does not rely on *Woodward* to teach or suggest such feature. Office Action at 6. The Office Action points to figures 2 and 33 and the passage at column 6, lines 12-42 of *Lindsey* to teach the feature. See Office Action at 3. However, the cited portions of *Lindsey* do not teach the feature. Figure 2 shows two electrical multiplexing units connected by a fiber optic tie line. This is illustrated by the electrical to optical converter 217 at the output of electrical mux 210 and by the optical to electrical converter 221 at the input of electrical mux 220 in figure 2 of *Lindsey*. Accordingly, *Lindsey* teaches that the multiplexing is performed electrically on electrical signals, and that there is no optical switch plane in the system. It should also be noted that figure 33 of *Lindsey* teaches a non-blocking matrix, but does not teach that the matrix is an optical switch plane. Because the cited portions of *Lindsey* teach no optical switch plane, the cited combination fails to teach or suggest “directing said chunks through said appropriate optical switch plane toward a plurality of destination ports,” as recited by claim 112.

Dependent claims 113-120 and 122-124 each depend either directly or indirectly from independent claim 112 and, thus, inherit all of the limitations of independent claim 112. Thus, the cited combination does not teach or suggest all claim limitations of claims 113-120 and 122-124. It is respectfully submitted that dependent claims 113-120 and 122-124 are allowable at least because of their dependence from claim 112 for the reasons discussed above.

Further, in rejecting claims 118, 120, 123, and 124, the Office Action admits that Woodward does not teach the features recited in those claims. See Office Action at 6. The Office Action then asserts that such features are design choices, and are, therefore, obvious. The Office Action lists the features and states, "In addition to above, such subject matters are of optical switch plane would be considered a design choice." *Id.* at 6. It is believed that such statement is Official Notice by the Office that the above-recited features are known. Applicant knows of no reference that teaches such features. Therefore, it is believed that that the features are not capable of instant and unquestionable demonstration as being well-known, as required of Official Notice by M.P.E.P. §2144.03(A).

Alternatively, such an assertion without documentary evidence may be appropriate if the Office Action provides "specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge." M.P.E.P. §2144.03(B). However, because the above-quoted statement is merely an assertion, rather than reasoning, the Official Notice must fail. Accordingly, the cited combination does not teach or suggest the recited features of claims 118, 120, 123, and 124. While Applicant has traversed the contents of the Official Notice, Applicant further respectfully requests that the Examiner provide an affidavit or publication supporting such Notice under M.P.E.P. § 2144.03(C) if the Examiner believes such features are well-known. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 112-120 and 122-124.

B. Rejections over Woodward in view of Lindsey in further view of Feldmeier

Claims 68-71, 94, and 121 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of *Feldmeier*. Applicant traverses the rejection.

As shown above, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claims 63, 88, and 112. Dependent claims 68-71, 94, and 121 each depend from respective independent claims 63, 88, and 112 and, thus, inherit all of the limitations of their respective independent claims. Thus, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claims 113-120 and 122-124. The Office Action does not rely on *Feldmeier* to teach or suggest the missing features. Therefore, the combination of *Woodward*, *Lindsey*, and *Feldmeier* does not teach or suggest all claim limitations of those claims. It is respectfully submitted that dependent claims 113-120 and 122-124 are allowable at least because of their dependence from their respective base claims for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 68-71, 94, and 121.

C. Rejections over Woodward in view of Lindsey in further view of Spendley

Claims 73-77 and 96-99 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of *Spendley*. Applicant traverses the rejection.

As shown above, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claims 63 and 88. Dependent claims 73-77 and 96-99 each depend from respective independent claims 63 and 88 and, thus, inherit all of the limitations of their respective independent claims. Thus, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claims 73-77 and 96-99. The Office Action does not rely on *Spendley* to teach or suggest the missing features. Therefore, the combination of *Woodward*, *Lindsey*, and *Spendley* does not teach or suggest all claim limitations of those claims. It is respectfully submitted that dependent claims 73-77 and 96-99 are allowable at least because of their dependence from claims 63 and 88 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claims 73-77 and 96-99.

D. Rejections over Woodward in view of Lindsey in further view of Spendley

Claim 100 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Woodward* in view of *Lindsey* in further view of *Enns*. Applicant traverses the rejection.

As shown above, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claim 88. Dependent claim 100 depends from claim 88 and, thus, inherits all of the limitations of claim 88. Thus, the combination of *Woodward* and *Lindsey* does not teach or suggest all claim limitations of claim 100. The Office Action does not rely on *Enns* to teach or suggest the missing features. Therefore, the combination of *Woodward*, *Lindsey*, and *Enns* does not teach or suggest all claim limitations of claim 100. It is respectfully submitted that dependent claim 100 is allowable at least because of its dependence from claim 88 for the reasons discussed above. Accordingly, Applicant respectfully requests the withdrawal of the rejection of claim 100.

IV. Claim Objections

On page 12 of the Office Action, the Examiner objects to claims 64-67, 72, 90-93, 95, and 110 for depending on rejected base claims and indicates that those claims are otherwise allowable. Applicant thanks the Examiner for this indication of allowable subject matter.

It should be noted that the Office Action Summary indicates that claim 90 is rejected; however, the body of the Office Action does not reject claim 90, and, in fact, indicates that claim 90 contains allowable subject matter. Accordingly, it is believed that the Office Action Summary is in error.

V. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes that a fee of \$25.00 is due with this response. However, if additional fees are due, please charge or credit Deposit Account No. 06-2380, under Order No. 59182/P004US/10020641 from which the undersigned is authorized to draw.

Dated: June 30, 2005

Respectfully submitted,

By Thomas H. Kelton

Thomas Kelton

Registration No.: 54,214

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-7115

(214) 855-8200 (Fax)

Attorney for Applicant